



Docket No.: 237814US30

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313



RE: Application Serial No.: 10/671,559
Applicants: Jose L CARBALLIDO
Filing Date: September 29, 2003
For: LINERLESS METALLIC CAP CLOSURE AND
METHOD OF FABRICATING THE SAME
Group Art Unit: 3727
Examiner: NGO, LIEN M.

SIR:

Attached hereto for filing are the following papers:

Response to Restriction Requirement

Our check in the amount of **\$0.00** is attached covering any required fees. In the event any variance exists between the amount enclosed and the Patent Office charges for filing the above-noted documents, including any fees required under 37 C.F.R. 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge or credit the difference to our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 C.F.R. 1.136 for the necessary extension of time. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

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Robert T. Pous

Registration No. 29,099

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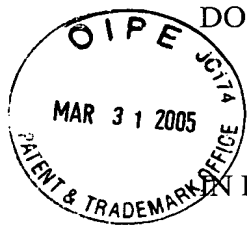
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DOCKET NO: 237814US30

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF

JOSE L CARBALLIDO

SERIAL NO: 10/671,559

FILED: SEPTEMBER 29, 2003

FOR: LINERLESS METALLIC CAP
CLOSURE AND METHOD OF
FABRICATING THE SAME

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: EXAMINER: NGO, LIEN M.

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: GROUP ART UNIT: 3727

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RESPONSE TO RESTRICTION REQUIREMENT

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

In response to the Restriction Requirement dated March 4, 2005, Applicants provisionally elect with traverse Group I, Claims 1-16, directed to a linerless metallic closure. Applicants make this election based on the understanding that Applicants are not prejudiced against filing one or more divisional applications that cover the non-elected claims.

In addition to making this election, Applicants further respectfully traverse this Restriction Requirement for the reason that the inventions of Groups I and II have not been shown to be distinct in the manner required by M.P.E.P. § 806.05(f).

As the noted portion of the manual indicates, the Patent Office must demonstrate either (1) that the process as claimed is not an obvious process of making the product and the process as claimed can be used to make other and different products, or (2) that the product as claimed can be made by another and materially different process.

Page 2 of the Restriction Requirement indicates that "[i]n the instant case, the product as claimed can be made by another and materially different process, for example, applying a foaming material layer to a surface of a metallic sheet, forming a closure from the metallic sheet having the foam material layer, applying a coat of varnish to the metallic sheet after applying the foam material layer, and wherein curing the foaming material layer in the atmosphere environment." Applicants fail to understand how such a method is materially different than the method recited in Claim 17.

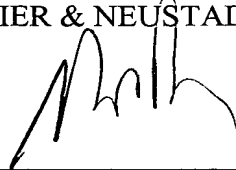
The linerless metallic closure of Claim 1 comprises a metal closure shell with a foamed material deposited over an inside surface of a top portion of the closure. The method for manufacturing a linerless closure of Claim 17 recites providing a metallic sheet, applying a foaming material to a surface of the sheet, and forming the closure from the metallic sheet. The method asserted in the outstanding Office Action to be materially different than the method of Claim 17 has the same steps of providing (implicit) a metal sheet, applying a foaming material, and forming a closure, but it adds steps of applying a coat of varnish, and curing the foaming under atmospheric conditions. However, the outstanding Office Action failed to explain the material difference between the method of Claim 17 and the proposed method. It appears to Applicants that the scope of Claim 17 encompasses the proposed process, which has been asserted as being materially different without any substantiation to the conclusory statement. Since the Restriction Requirement fails to set forth a process that is materially different and capable of making the product of Group I, it cannot be said to have met the requirement of MPEP § 806.05(f) as to showing a "materially different process" for making the product.

Application No. 10/671,559
Reply to Office Action of March 4, 2005

Accordingly, it is respectfully requested that the requirement to elect a single group be withdrawn, and that a full examination on the merits of Claims 1-30 be conducted.

Respectfully submitted,

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